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L.P., Appellant)	
)	
and)	Docket No. 06-1574
)	Issued: October 16, 2006
DEPARTMENT OF LABOR, OFFICE OF)	
WORKERS' COMPENSATION PROGRAMS,)	
Dallas, TX, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On June 26, 2006 appellant filed a timely appeal of a June 15, 2006 merit decision of the Office of Workers' Compensation Programs regarding authorization for back surgery on July 7, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether the Office properly denied reimbursement of medical expenses for a July 7, 2004 back surgery, on the grounds that the employment-related condition had resolved and there was no objective evidence of a material worsening of the preexisting condition.

FACTUAL HISTORY

On September 29, 2003 appellant submitted a traumatic injury claim alleging that he sustained a back injury on that date when he fell on his buttocks after his chair rolled backwards. Appellant stopped working on September 29, 2003.¹ The medical evidence of record indicates that appellant previously had back surgery on December 22, 1999.

In a report dated October 2, 2003, Dr. Salvatore Campo, an osteopath, provided a history of injury and results on examination. He diagnosed chronic pain, failed back and low back pain with exacerbation secondary to a fall. Dr. Campo reported in an October 20, 2003 report that appellant seemed to be doing better with additional pain medication. By report dated March 2, 2004, he stated that appellant had been relatively stable with constant doses of analgesic medications. Appellant reported that he had pain across the lower back that did not radiate into the legs.

By decision dated May 20, 2004, the Office denied the claim for compensation on the grounds that the medical evidence did not establish causal relationship between a diagnosed condition and the employment incident.

On July 7, 2004 appellant underwent lumbar surgery performed by orthopedic surgeons Drs. Steven Hochschuler and Sandra Moore. On September 9, 2004 Dr. Hochschuler stated that the injury for which appellant was treated was an aggravation of a previous back condition. The aggravation was significant in that his chair gave out from under him and was probably what forced him to require surgery.

The Office referred medical records and a statement of accepted facts to an Office medical adviser for an opinion regarding the July 7, 2004 surgery. In a February 2, 2005 report, the medical adviser reviewed the evidence and opined that appellant sustained a temporary aggravation of a lumbar strain that resolved by October 20, 2003, when seen by Dr. Campo. The medical adviser concluded that the surgery should not be authorized.

By letter dated March 4, 2005, the Office advised appellant that a conflict in the medical evidence existed between Dr. Hochschuler and the Office medical adviser regarding whether the surgery was employment related. The Office indicated that Dr. Farooq I. Selod, a Board-certified orthopedic surgeon, had been selected as the referee examiner.

In a report dated March 23, 2005, Dr. Selod provided a history of the employment injury and noted the prior December 1999 surgery. He diagnosed "disc L3-4, L4-5." Dr. Selod noted that he was asked to review diagnostic evidence prior to and after the employment injury and answer whether there was "any objective evidence to support a material worsening of claimant's preexisting condition which would warrant" the July 7, 2004 surgery. He responded, "No objective evidence, but subjectively he got worse. There were no comparative x-rays available from 1999 and 2003." Dr. Selod did not provide any other information. He was also asked whether the operative findings documented a material worsening caused by specific trauma on September 23, 2003 and he stated: "Again, no such evidence noted."

¹ It is not clear from the record when appellant returned to work.

By decision dated April 13, 2005, the Office determined that appellant had sustained a temporary aggravation of lumbar strain. The Office found that the July 7, 2004 surgery was not the result of the employment injury and any aggravation had resolved by July 6, 2004. The Office stated that there was no material aggravation of the underlying condition.

In a letter dated April 10, 2006, appellant requested reconsideration of his claim. He stated that Dr. Hochschuler documented the need for surgery as result of the employment injury, that Dr. Selod was not provided with the relevant medical evidence and the Office erred in failing to issue a notice of proposed termination.

By decision dated June 15, 2006, the Office denied modification of the April 13, 2005 decision.

LEGAL PRECEDENT

Section 8103(a) of the Federal Employees' Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.²

When the Office refers a claimant for a referee examination pursuant to 5 U.S.C. § 8123(a), it has an obligation to secure a reasoned medical opinion that resolves the conflict.³

ANALYSIS

Although the Office referred to Dr. Selod as a second opinion physician, the record clearly indicated that a conflict was found under 5 U.S.C. § 8123(a) and appellant was referred to Dr. Selod as a referee examiner to resolve the conflict. Dr. Hochschuler had supported causal relationship between the surgery and the employment injury, while the medical adviser had found no causal relationship as the employment-related condition had resolved.

Dr. Selod's report is not of sufficient probative value to resolve the conflict. He did not provide a detailed history and it is not clear what medical evidence he was provided for review. Dr. Selod stated that there were no comparative x-rays available from 1999 and 2003, but the record does contain magnetic resonance imaging scan from May 1999, March 2000 and October 2003, as well as radiology reports from September and December 1999 and at the time of surgery in 2004. None of these reports were discussed. Moreover, Dr. Selod did not provide a reasoned medical opinion. The Office asked only a narrow question as to whether there was objective evidence of a material worsening of the employment-related condition and Dr. Selod provided a brief response. The issue is whether the July 7, 2004 lumbar surgery was causally related to an employment injury and the physician should provide a reasoned medical opinion explaining his opinion and referring to the relevant evidence in support of the opinion.

² 5 U.S.C. § 8103(a).

³ See *Thomas Graves*, 38 ECAB 409 (1987).

The case will be remanded to secure a reasoned medical opinion based on a complete background. All the relevant medical evidence should be provided. The referee examiner should discuss the employment-related condition and provide an opinion on whether it has resolved and if so when it resolved and whether the July 7, 2004 surgery was causally related to the employment injury. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that the referee examiner, Dr. Selod, did not resolve the issues and the case will be remanded for additional development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 15, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: October 16, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board